

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE**

**WRIT PETITION NO.6081 OF 2004
WITH
CIVIL APPLICATION NO.2897 OF 2004
WITH
WRIT PETITION NO.6082 OF 2004
WITH
CIVIL APPLICATION NO.2880 OF 2004**

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders.

Court's or Judge's orders

Mr. S.M. Railkar, for the Petitioners

Ms. Yasmeen Karanjia with Mr. B.D. Shoi
for the Respondent Nos. 1 to 4.

Mrs. S.S. Bhende, A.G.P. for Respondent

CORAM : F.I. REBELLO,J.
DATED : JANUARY 14, 2005

P.C.

. Both these petitions can be disposed of by common order as the issue involved is limited. The petitioners herein moved an application before the learned Judge trying the election petition to frame an issue about maintainability of the petition on the ground that the plaint does not disclose any corrupt practise within the meaning of Section 15(6) of the Bombay Village Panchayats Act, 1958. The learned Judge after considering the contention has been pleased to observe that the said contention would not fall within the meaning of Section 9A of the C.P.C. and consequently no preliminary issue to be framed and as such has rejected the

application for framing of preliminary issue.

2. The real controversy is whether the petition as filed discloses any prima facie material making out a case of corrupt practise within the meaning of Section 15(6) of the Act. It is open, therefore, to the successful candidate to raise the issue that the petition does not disclose any ground which constituted a corrupt practice. The learned trial Judge to consider that issue and dispose it of according to law. This may not touch the jurisdiction of the Court but touches the maintainability of the petition itself. Considering the above, to my mind the ends of justice would be met if the impugned orders are set aside and the matters are remanded back to the trial Court for reconsideration and framing of an issue as to maintainability of the petition on the ground as sought by the petitioners namely that the petition does not disclose any ground of corrupt practice and consequently ought to be dismissed. The learned Judge to hear the parties and after considering the averments in the plaint dispose of the same according to law.

3. Rule made absolute in each of the present petitions accordingly. Both the petitions disposed of.

4. In view of the disposal of the main petitions Civil Applications in both the petitions dismissed as infructuous.

. Parties/Authorities to act on an ordinary copy of this order duly authenticated by the Personal Secretary/Associate of this Court.

(F.I. REBELLO, J.)